

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CHARLESTON MARINE CONTAINER, INC.

Employer

And

UNITED STEELWORKERS OF AMERICA, AFL-CIO,CLC

Petitioner

Case No.11-RC-6367

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 1/

All full time production, maintenance, and warehouse employees, including crew leaders employed by the Employer at its Charleston, South Carolina, facility, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees

OVER

engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

United Steelworkers of America, AFL-CIO,CLC

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 11 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office of the National Labor Relations Board, Region 11, 4035 University Parkway, Suite 200, P. O. Box 11467, Winston-Salem, North Carolina 27116-1467, on or before **January 10, 2000**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

If you have any questions, please contact the Regional Office.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **January 18, 2000**.

Dated January 3, 2000 September 11,
2000

at Winston-Salem, North Carolina

/s/ Willie L. Clark, Jr.
Regional Director, Region 11

11-RC-6367

- 1/ The Employer is a South Carolina Corporation with principle offices and facilities located in Charleston, South Carolina where it is engaged in the manufacture of intermodal containers and equipment. During the past twelve month period, the Employer sold and shipped products valued in excess of \$50,000 from its Charleston, South Carolina facility to points directly outside the State of South Carolina.

The parties are in agreement as to the composition of the unit. The only issue herein is whether three should be included in the unit as requested by the Petitioner or excluded as statutory supervisors as contended by the Employer.

The Employer builds intermodal containers on a high volume production line at its manufacturing facility in Charleston, South Carolina. The facility is approximately a quarter of a million square feet in size. The Employer has Foremen who no one apparently disputes are 2(11) supervisors. The record does not indicate how many Foremen the Employer employs at this facility during its one shift operation nor the number of departments or areas that the Employer operates. The record is also unclear as to the number of employees in the unit, although the petition filed in this matter would seem to indicate that there are approximately 85 employees in the unit sought.

Crew Leaders work alongside uncontested unit employees in large structures referred to as "fixtures". The record does not demonstrate if Crew Leaders perform physical work as do unit employees. The Crew Leaders work under Foremen in those areas that require more attention and coordination than other areas. The Crew Leaders are additional bodies in the plant to ensure that production is being carried out. They appear to be individuals with greater experience, training and skill than the uncontested unit employees. At the present time, the Employer utilizes a Crew Leader in the main assembly fixture, one in the shot blasting area, and a crew leader in burning. It appears that all Crew Leaders have basically the same duties and responsibilities .

The Foremen decides who works in a particular fixture and moves employees from fixture to fixture in order to meet the company's requirements. Crew Leaders are responsible for coordinating where uncontested unit employees work within the fixture. They assign employees their tasks and change their positions in the fixture as required. The equipment used in the various sections can be potentially dangerous. Thus, the Crew Leader will coordinate and manage the situations by positioning employees throughout the fixture in order to avoid injury and to ensure that the work is done consistently. He determines where the employee will be positioned based upon his experience and skill. The record fails to show what effect, if any, this movement within the fixture has on the employees' terms and conditions of employment.

The crew leader may direct uncontested unit employees to improve their work or improve their productivity and may make recommendations about discipline.

11-RC-6367

Where there is a problem with either a fixture or with an individual, the Crew Leader will identify this to the Foreman with a recommendation. However, it appears that the Foremen "look into" the matter after it is reported. If employees are having problems with each other the Crew Leader usually separates them or pulls them aside and "tells them what's got to happen" "unless he doesn't feel that he can handle the problem". If there are disputes among the employees, the Crew Leader usually resolves it "depending on the circumstances". Problems get brought up at a meetings amongst the employees and the Crew Leader but it is not clear what these problems relate to, who brings the matters up, i.e., the employee, Crew Leader or the Foreman, and who, the crew leader or the foreman, determines if, or what form of discipline will be taken in circumstances where it is determined that discipline is appropriate. The record demonstrates that Crew Leaders make recommendations regarding discipline, promotions and pay raises and their recommendations are generally followed. However, the does not reveal whether these recommendations are independently investigated or evaluated prior to implementation.

The Production Manager determines whether the size of a crew will be increased or decreased. A Crew Leader may have some impact on an employee being moved from one area to another by virtue of requesting more or less help in his area if he thinks he's over or under manned. However, it does not appear that the Crew Leaders recommendations are followed without investigation.

The crew leader cannot determine the need for overtime – that is determined by the production manager. When overtime is required, however, it is generally done on a small project basis and the individuals who are brought in are generally determined by the crew leader since he knows people that are qualified to do the work involved. It is not established if Foremen also work this overtime or what input they have into the choice of employees to work overtime.

Crew Leaders are paid fifty cents per hour more than uncontested unit employees. However, the record does not reveal what percentage more this constitutes or how it compares to that of the Foremen. Similarly, Crew Leaders receive the same benefits as employees but the record does not demonstrate how this compares to the benefits Foremen receive. Crew Leaders wear the same uniforms as employees albeit they have a white stripe around their hard hat to identify them as leadmen. Foremen wear similar uniforms to those worn by employees and Crew Leaders. Employees punch a timeclock. The record does not reveal if Crew Leaders and/or Foremen do so also. Employees are subject to periodic evaluations which are prepared and signed off on by their Foreman. Crew Leaders have some unidentified input into these evaluations as they relate to performance. Crew Leaders cannot approve time off for employees but merely provide the necessary forms to them which are needed to secure the necessary approval. Crew Leaders do not have the authority to hire employees. However, they do observe potential employees prior to hiring to ensure that they have the

11-RC-6367

necessary technical skills for the job. There are production meetings held every morning between the Production Manager and the Foreman. Crew Leaders do not attend these meetings. The Foreman, apparently after the foregoing meetings, have brief meetings with the employees who report to them to let them know what needs to be done that day. Foremen might meet with the Crew Leaders alone on those occasions where the number of employees the Foremen supervise is large. Foremen and the Crew Leaders verify what jobs and apparently hours that employees work. Crewleaders possess keys to a tool box and on weekends they may have keys to the tool room so they can supply tools to their crew. Foreman have the same access to these keys on a daily basis. It is not known from the record what other keys or access that Foremen have that Crew Leaders do or do not. On the infrequent occasion that a Foreman is not at work, a Crew Leader may oversee his area.

To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. Chicago Metallic Corp., 273 NLRB 1677, 1689 (1985). Consistent with the statutory language and the legislative intent, however, it is well recognized that the disjunctive listing of supervisory indicia in Section 2(11) does not alter the requirement that a supervisor must exercise independent judgment in performing the enumerated functions. Thus, the exercise of supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not elevate an employee into the supervisory ranks, the test of which must be the significance of the judgment and directions. Opelika Foundry, 281 NLRB 897, 899 (1986). The burden of proving supervisory status rests on the party alleging that such status exists. Tucson Gas & Electric Co., 241 NLRB 181 (1979). The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. Quadrex Environmental Co., 308 NLRB 101, 102 (1992).

Based upon the foregoing and the record as a whole, I find that Crew Leaders should be included into the unit herein. Thus, I do not find that the Employer has met its burden of establishing that the Crew Leaders possess actual supervisory authority. In this regard I note that the authority to effectively recommend generally means that the recommended action is taken with no independent investigation by superiors, not simply that the recommendation is ultimately followed. ITT Lighting Fixtures.¹ The evidence herein fails to establish that the various recommendations attributed to the Crew Leaders were taken with no independent investigation by their supervisors. Similarly, the fact that management seeks advice as to the potential of prospective employees

¹ 265 NLRB 1480, 1481 (1982), reversed on other grounds 283 NLRB 453 (1987).

11-RC-6367

from current members of its own complement is not itself sufficient to confer supervisory status. Polynesian Hospitality Tours;² Mower Lumber Co.³ Moreover, the fact that the Foremen obtain input from the Crew Leaders in conducting performance reviews does not confer supervisory status in the absence of evidence that the input constitutes an effective recommendation for a pay increase, promotion, or other reward. Arizona Public Service Co.⁴ Additionally, the fact that if a Crew Leader observes an employee not performing his work properly, he can report this to the Foreman is merely a reporting function and does not establish supervisory status, especially where, as it appears here, the then makes his own investigation and decides what to do. Express Messenger Systems, 301 NLRB 651, 653-654 (1991). A Crew Leader's responsibility to report infractions to higher management is insufficient to confer supervisory status as it does not lead to personnel action without review by others. Artcraft Displays, Inc.⁵ (leadmen not supervisors even though they report employee problems to employer); Knogo Corp.⁶ (leadperson was not agent of employer although she reported rule infractions or repeated incidents of poor performance by other employees where discipline was preceded by an independent investigation). I would also find that in the absence of any evidence that such recommendations concerning discipline automatically lead to discipline or adverse action against an employee, this would not establish the supervisory status of Crew Leaders. Northcrest Nursing Home, 313 NLRB 491, 497 (1993); Passavant Health Center, 284 NLRB 887, 889 (1987); The Ohio Masonic Home, 295 NLRB 390, 393 (1989). Nor would the fact that the Crew Leaders monitor the quality of the work produced and can talk to employees about their performance, train them in how to do something and instruct them to redo a task support a finding of supervisory status. Hexacomb Corp., 313 NLRB 983, 984 (1994); 299 Lincoln Street, Inc., 292 NLRB 172, 183 (1988). Similarly, initialing time cards to verify hours worked does not require a finding of supervisory status. John N. Hansen Co., 293 NLRB 63, 64 (1989). Here, it is not totally clear that the Crew Leaders do even this. Moreover, the signing of time cards is a routine clerical function which is not indicative of supervisory status. Walter J. Barnes Electrical Co., 188 NLRB 183, 188 (1971); Lawson-United Feldspar, 189 NLRB 350, ALJD at 354 (1971). Additionally, the Board has held that irregular or sporadic substitution for supervisors, such as during vacations and at other unscheduled times, does not confer supervisory status. Hexacomb Corp., 313 NLRB 983, 984 (1994); Gaines Electric Co., 309 NLRB 1077, 1078 (1992). Thus, the fact that the Crew Leaders may be present at the facility at times when or other uncontested supervisors are not

² 297 NLRB 228, ALJD at 234 (1989).

³ 276 NLRB 766, ALJD at 772 (1985).

⁴ 310 NLRB 477, 481 (1993).

⁵ 262 NLRB 1233, 1234-1235 (1982).

⁶ 265 NLRB 935, 935-936 (1982), enf. in relevant part 727 F.2d 55 (2d Cir. 1984).

Charleston Marine Container, Inc.

11-RC-6367

present does not establish supervisory status. North Shore Weeklies, Inc., 317 NLRB 1128, 1131 (1995).

The fact that the Crew Leader makes fifty cents more per hour than uncontested unit employees is, at best, a secondary indicia of supervisory status and cannot transform the Crew Leaders into statutory supervisors in the absence of any evidence that they possesses at least one of the statutory indicia. Northcrest Nursing Home, 313 NLRB 491, 498 (1993).

The Board has held that "conclusionary statements made by witnesses in their testimony, without supporting evidence, does not establish supervisory authority." Sears, Roebuck & Co., 304 NLRB 193 (1991).

177 8520 0100

177 8520 1600

177 8520 4700